

AMENDED IN SENATE MAY 22, 2003

AMENDED IN SENATE MAY 6, 2003

AMENDED IN SENATE MARCH 17, 2003

**SENATE BILL**

**No. 186**

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**Introduced by Senator Murray**

February 12, 2003

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An act to amend Section 17538.4 of, and to add Article 1.8 (commencing with Section 17529) to Chapter 1 of Part 3 of Division 7 of, the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 186, as amended, Murray. Privacy: unsolicited e-mail advertising.

Existing law prohibits a person or entity conducting business in the state from e-mailing or causing to be e-mailed documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity establishes a toll-free telephone number or valid sender operated return e-mail address that a recipient may contact to notify the sender not to e-mail the recipient any further unsolicited documents. Existing law requires that notification of the toll-free telephone number, and a valid address that a recipient may write to, be included on these unsolicited e-mailed documents, and prohibits the e-mailing of these unsolicited advertising documents to a person who has requested not to receive any further unsolicited documents. Existing law requires certain unsolicited e-mail advertisements to contain a heading of "ADV:" or "ADV:ADLT." A violation of the provisions governing advertising is a misdemeanor.

This bill would prohibit an advertiser located in California from using unsolicited commercial e-mail advertisements. The bill would prohibit an advertiser not located in California from using unsolicited commercial e-mail advertisements sent to a California e-mail address if the advertiser knows or should reasonably know that it is a California e-mail address. The bill would provide that if any part of these provisions or their application is held invalid, the invalidity would not affect the other provisions.

This bill would authorize the recipient of a commercial e-mail advertisement transmitted in violation of these prohibitions or the Attorney General to bring an action to recover \$1,000 per individual violation. The bill would provide that a cause of action in existence prior to its enactment would be governed by the law in effect at the time it arose.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 1.8 (commencing with Section 17529)  
2 is added to Chapter 1 of Part 3 of Division 7 of the Business and  
3 Professions Code, to read:

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5 Article 1.8. Restrictions On Unsolicited Commercial E-mail  
6 Advertisers

7

8 17529. For the purpose of this article, the following  
9 definitions apply:

10 (a) "Advertiser" means a person or entity that advertises  
11 through the use of unsolicited commercial e-mail advertisements.

12 (b) "California electronic mail address" or "California e-mail  
13 address" means any of the following:



1 (1) An e-mail address furnished by an electronic mail service  
2 provider that sends bills for furnishing and maintaining that e-mail  
3 address to a mailing address in this state.

4 (2) An e-mail address ordinarily accessed from a computer  
5 located in this state.

6 (3) An e-mail address furnished to a resident of this state.

7 (c) “Commercial e-mail advertisement” means any electronic  
8 mail message initiated for the purpose of advertising or promoting  
9 the lease, sale, rental, gift offer, or other disposition of any  
10 property, goods, services, or extension of credit.

11 ~~(d) “Direct consent” means a recipient’s unambiguous~~  
12 ~~expression of permission to receive a commercial e-mail~~  
13 ~~advertisement of the type transmitted, where the recipient has clear~~  
14 ~~and conspicuous notice of the scope of the permission, including~~  
15 ~~the types of commercial e-mail advertisements and the advertisers~~  
16 ~~or types of advertisers included, at the time the recipient grants that~~  
17 ~~permission. “Direct consent” means that the recipient has~~  
18 ~~expressly consented to receive the message, either in response to~~  
19 ~~a clear and conspicuous request for the consent or at the recipient’s~~  
20 ~~own initiative.~~

21 (e) “Domain name” means any alphanumeric designation that  
22 is registered with or assigned by any domain name registrar as part  
23 of an electronic address on the Internet.

24 (f) “Electronic mail” or “e-mail” means an electronic  
25 message that is transmitted between two or more  
26 telecommunications devices, computers, or electronic devices  
27 capable of receiving electronic messages, whether or not the  
28 message is converted to hard copy format after receipt or is viewed  
29 upon transmission or stored for later retrieval. “Electronic mail”  
30 or “e-mail” includes electronic messages that are transmitted  
31 through a local, regional, or global computer network.

32 ~~(i)~~

33 (g) “Electronic mail address” or “e-mail address” means a  
34 destination, commonly expressed as a string of characters, to  
35 which electronic mail can be sent or delivered. An “electronic mail  
36 address” or “e-mail address” may include a user name or mailbox  
37 and a reference to an Internet domain.

38 (h) “Internet” has the meaning set forth in paragraph (6) of  
39 subdivision (e) of Section 17538.

(i) “Preexisting or current business relationship,” as used in connection with the sending of a commercial e-mail advertisement, means either of the following:

~~(1) The recipient has purchased or leased property, goods, or services from the sender and both of the following conditions are met:~~

~~(A) The subject of the commercial e-mail advertisement concerns that purchase or lease.~~

~~(B) The commercial e-mail advertisement is sent within 12 months of the purchase or lease, or within any longer express warranty period.~~

~~(2) The recipient has an ongoing contract with the sender and the commercial e-mail advertisement directly concerns the ongoing contract.~~

*(1) That within the three-year period ending upon receipt of the advertisement, the recipient has made an inquiry, application, purchase, or transaction regarding products or services offered by the sender.*

*(2) That the recipient has made an inquiry, application, purchase, or transaction regarding products or services offered by the sender and the sender maintains an electronic or written record of the transaction.*

(j) “Recipient” means the addressee of a commercial e-mail advertisement. If an addressee of a commercial e-mail advertisement has one or more e-mail addresses to which a commercial e-mail advertisement is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the advertisement is sent.

(k) “Unsolicited commercial e-mail advertisement” means a commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

~~(1) Has~~ *The recipient has* not provided direct consent to receive the commercial e-mail advertisement.

~~(2) Does~~ *The recipient does* not have a preexisting or current business relationship, as defined in subdivision ~~(j)~~ *(i)*, with the advertiser of the realty, goods, services, or extension of credit.

17529.1. (a) Notwithstanding any other provision of law, if an advertiser is located in California, the advertiser shall not advertise using an unsolicited commercial e-mail advertisement.

1 (b) Notwithstanding any other provision of law, an advertiser  
2 that is not located in California shall not advertise using an  
3 unsolicited commercial e-mail advertisement that is sent to a  
4 California e-mail address if the advertiser knows or should  
5 reasonably foresee that the e-mail address is a California e-mail  
6 address.

7 (c) The provisions of this section are severable. If any provision  
8 of this section or its application is held invalid, that invalidity shall  
9 not affect any other provision or application that can be given  
10 effect without the invalid provision or application.

11 17529.2. (a) In addition to any other remedies provided by  
12 this article or by other provisions of law, a recipient of an  
13 unsolicited commercial e-mail advertisement transmitted in  
14 violation of Section 17529.1 may bring an action to recover one  
15 thousand dollars (\$1,000) for each individual violation of that  
16 section.

17 (b) In addition to any other remedies provided by this article or  
18 by other provisions of law, the Attorney General may bring an  
19 action against a person or entity in violation of Section 17529.1 to  
20 recover one thousand dollars (\$1,000) for each individual  
21 violation of that section.

22 SEC. 2. Section 17538.4 of the Business and Professions  
23 Code is amended to read:

24 17538.4. (a) A person or entity conducting business in this  
25 state shall not electronically mail (e-mail) or cause to be e-mailed  
26 documents containing unsolicited advertising material for the  
27 lease, sale, rental, gift offer, or other disposition of any realty,  
28 goods, services, or extension of credit unless that person or entity  
29 establishes a toll-free telephone number or valid sender operated  
30 return e-mail address that the recipient of the unsolicited  
31 documents may call or e-mail to notify the sender not to e-mail any  
32 further unsolicited documents.

33 (b) An unsolicited e-mailed document subject to this section  
34 shall include a statement informing the recipient of the toll-free  
35 telephone number that the recipient may call, or a valid return  
36 address to which the recipient may write or e-mail, as the case may  
37 be, notifying the sender not to e-mail the recipient any further  
38 unsolicited documents to the e-mail address, or addresses,  
39 specified by the recipient.

1 The statement shall be the first text in the body of the message  
2 and shall be of the same size as the majority of the text of the  
3 message.

4 (c) Upon notification by a recipient of his or her request not to  
5 receive any further unsolicited e-mailed documents, a person or  
6 entity conducting business in this state shall not e-mail or cause to  
7 be e-mailed any unsolicited documents to that recipient.

8 (d) This section shall apply when the unsolicited e-mailed  
9 documents are delivered to a California resident via an electronic  
10 mail service provider's service or equipment located in this state.  
11 For these purposes, "electronic mail service provider" means a  
12 business or organization qualified to do business in this state that  
13 provides individuals, corporations, or other entities the ability to  
14 send or receive electronic mail through equipment located in this  
15 state and that is an intermediary in sending or receiving electronic  
16 mail.

17 (e) As used in this section, "unsolicited e-mailed documents"  
18 means an e-mailed document or documents consisting of  
19 advertising material for the lease, sale, rental, gift offer, or other  
20 disposition of any realty, goods, services, or extension of credit  
21 that meet both of the following requirements:

22 (1) The documents are addressed to a recipient with whom the  
23 initiator does not have an existing business or personal  
24 relationship.

25 (2) The documents are not sent at the request of, or with the  
26 express consent of, the recipient.

27 (f) As used in this section, "e-mail" or "cause to be e-mailed"  
28 does not include or refer to the transmission of any documents by  
29 a telecommunications utility or Internet service provider to the  
30 extent that the telecommunications utility or Internet service  
31 provider merely carries that transmission over its network.

32 (g) In the case of e-mail that consists of unsolicited advertising  
33 material for the lease, sale, rental, gift offer, or other disposition  
34 of any realty, goods, services, or extension of credit, the subject  
35 line of each and every message shall include "ADV:" as the first  
36 four characters. If these messages contain information that  
37 consists of unsolicited advertising material for the lease, sale,  
38 rental, gift offer, or other disposition of any realty, goods, services,  
39 or extension of credit that may only be viewed, purchased, rented,  
40 leased, or held in possession by an individual 18 years of age and

1 older, the subject line of each and every message shall include  
2 “ADV:ADLT” as the first eight characters.

3 (h) An employer who is the registered owner of more than one  
4 e-mail address may notify the person or entity conducting business  
5 in this state e-mailing or causing to be e-mailed documents  
6 consisting of unsolicited advertising material for the lease, sale,  
7 rental, gift offer, or other disposition of any realty, goods, services,  
8 or extension of credit of the desire to cease e-mailing on behalf of  
9 all of the employees who may use employer-provided and  
10 employer-controlled e-mail addresses.

11 (i) This section shall not apply to an advertiser subject to  
12 Article 1.8 (commencing with Section 17529) of this chapter.

13 (j) This section, or any part of this section, shall become  
14 inoperative on and after the date that federal law is enacted that  
15 prohibits or otherwise regulates the transmission of unsolicited  
16 advertising by electronic mail (e-mail).

17 SEC. 3. A cause of action that is in existence before the  
18 effective date of this act shall not be affected by this act, but shall  
19 instead be governed by the law that was in effect at the time the  
20 cause of action arose.

21 SEC. 4. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.

